

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

January 19, 2006

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, January 19, 2006, at 1:30 P.M., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Harold Warner Jr., Chair; Darrell Downing, Vice-Chair; John W. McKay, Jr.; Bill Johnson; Elizabeth Bishop; M.S. Mitchell; Don Anderson; Denise Sherman; Bud Hentzen (Out @3:28); Ronald Marnell; Hoyt Hillman and Morris K. Dunlap. Bob Aldrich and Michael Gissick were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Manager; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Jess McNeely, Senior Planner; Scott Dunakey, Associate Planner; David Barber, Advanced Plans Manager and Rose Simmering, Recording Secretary.

1. Approval of December 22, 2005 and January 5, 2006 meeting minutes.

MOTION: To approve December 22, 2005 meeting minutes.

ANDERSON moved, **DOWNING** seconded the motion, and it carried (11-0-1).
MCKAY abstains.

MOTION: To approve January 5, 2006 meeting minutes.

DOWNING moved, **HILLMAN** seconded the motion, and it carried (10-0-2).
MITCHELL and **DUNLAP** abstain.

❖ **SUBDIVISION ITEMS**

2. Consideration of Subdivision Committee recommendations from the meeting of January 12, 2006.

2-1. SUB 2005-96: Final Plat -- TOWNE PARC 8TH ADDITION, located south of Pawnee and west of Webb Road.

NOTE: This is unplatted property located in the County adjoining Wichita's city limits and annexation is required. The site is currently zoned SF-20, Single-Family residential and will be converted to SF-5, Single-Family Residential upon annexation.

STAFF COMMENTS:

- A. Prior to this plat being scheduled for City Council review, annexation of the property will need to be completed. Upon annexation, the property will be zoned SF-5, Single-Family Residential and allow for the lot sizes being platted.
- B. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted. Fees in lieu of assessment regarding extensions of sewer main are required. **An off-site sewer easement is needed. A 10-ft utility easement within Reserve A is needed.**
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- E. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- F. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- G. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- H. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- I. Approval of this plat will require a waiver of the lot depth to width ratio of the Subdivision Regulations for Lot 9, Block C. The

Subdivision Regulations state that the maximum depth of all residential lots shall not exceed 2.5 times the width. **A modification has been approved.**

- J. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- K. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- T. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy has requested additional easements.**
- U. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: cholloway@wichita.gov). Please include the name of the plat on the disc.

MOTION: To approve subject to staff recommendations.

MARNELL moved, **JOHNSON** seconded the motion, and it carried (12-0).

- 2-2. **DED 2006-01 AND DED 2006-02: Dedication of Drainage and Utility Easements,** located west of Ridge Road and north of 37th Street North.

A) DED 2006-01 AND B) DED 2006-02: Dedication of Drainage and Utility Easements for property located west of Ridge Road and north of 37th Street North.

APPLICANT: Kansas Bait and Tackle, LLC, C/O Steve Peebles, 7570 W. 21st Street North, Bldg. 1050, Ste. B, Wichita, KS 67205

AGENT/SURVEYOR: MKEC Engineering Consultants, Inc., 411 N. Webb Road, Wichita, KS 67206

LEGAL DESCRIPTIONS:

A) DED 2006-01: A tract of land lying in a portion of Lot 6, Block 1, North Ridge Village Addition, Wichita, Sedgwick County, Kansas; said tract being more particularly described as follows:

COMMENCING at the northwest corner of Lot 6, thence along the north line of Lot 6 on a platted basis of bearing of N88°41'35"E, 155.00 feet; thence parallel with the west line of said Lot 6, S01°27'06"E, 398.17 feet; thence S46°27'06"E, 99.98 feet to the **POINT OF BEGINNING**, thence N01°27'06"W, 17.17 feet; thence N85°09'05"E, 209.22 feet; thence S83°31'41"E, 146.84 feet; thence S01°27'06"E, 14.33 feet; thence S88°32'54"W, 135.00 feet; thence S01°27'06"E, 39.52 feet to the north line of a platted 20-foot utility easement being on a point on a curve to the left; thence along the said curve and along aforesaid north line 22.56 feet, said curve having a central angle of 10°46'22", a radius of 120.00 feet, and a long chord distance of 22.53 feet, bearing N64°02'27"W; thence N01°27'06"W, 34.15 feet; thence S88°32'54"W, 199.29 feet to the **POINT OF BEGINNING**.

B) DED 2006-02: A tract of land lying in portion of Lot 6, Block 1, North Ridge Village Addition, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follows:

The east 15 feet of the west 25 feet of Lot 6, Block 1, EXCEPT the north and south 20 feet thereof.

TOGETHER WITH;

A tract of land lying in portion of Lot 5, Block 1, North Ridge Village Addition, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follows:

COMMENCING at the northeast corner of Lot 5, thence along the east line of Lot 5 on a platted bearing of S01°27'08"E, 20.00 feet, thence S88°41'33"W, 10.00 feet to the **POINT OF BEGINNING** being the intersection of a platted 20-foot drainage and utility easement; thence along the west line of a platted 20-foot drainage and utility easement S01°27'08"E, 524.67 feet to the intersection of a platted 20-foot utility easement; thence along the north line of aforesaid 20-foot utility easement S88°32'54"W, 10.00 feet; thence along the westerly line of aforesaid 20-foot utility easement, S01°27'06"W, 20.00 feet to the northerly line of a 50'x100' street dedication; thence along said northerly line, S88°32'54"W, 15.00 feet; thence N01°27'06"W, 544.73 feet to the southerly line of aforesaid 20-foot utility easement; thence N88°41'33"E, 25.00 feet to the **POINT OF BEGINNING**.

TOGETHER WITH;

A tract of land lying in portion of Lot 5, Block 1, North Ridge Village Addition, Wichita, Sedgwick County, Kansas, said tract being more particularly described as follows:

COMMENCING at the southwest corner of Lot 5, thence along the south line of Lot 5 on a platted bearing of N82°53'19"E, 155.38 feet; thence N07°06'41"W, 10.00 feet to the **POINT OF BEGINNING** being on the north line of a platted 20-foot drainage and utility easement; thence N50°58'56"E, 68.27 feet to the west line of a 50'x100' street dedication, thence along said west line, S01°27'06"E, 36.26 feet to the aforesaid north line of a 20-foot utility easement; thence along north line, N82°53'19"W, 54.38 feet to the **POINT OF BEGINNING**.

PURPOSE OF DEDICATION: These dedications are associated with a lot split case (SUB 2005-135), and are being dedicated for construction and maintenance of public utilities (proposed sewer line).

STAFF RECOMMENDATION: Accept the Dedications.

MOTION: To approve subject to staff recommendations.

MARNELL moved, **JOHNSON** seconded the motion, and it carried (12-0).

2-3. **DED 2006-03: Dedication of a Utility Easement,** located south of Central and east of Hoover.

DED 2006-03: Dedication of a Utility Easement for property located south of Central and east of Hoover Road.

APPLICANT: Daniel and Shirley Warren, 607 Doris, Wichita, KS 67212

AGENT/SURVEYOR: (No Agent/Surveyor Listed)

LEGAL DESCRIPTION: A five-foot utility easement along the west property line of the west 94.09 feet of Lot 10, Block 10, Fruitvale Park Addition, Wichita, Sedgwick County, Kansas.

PURPOSE OF DEDICATION: This dedication is associated with a lot split case (SUB 2005-152), and is being dedicated for construction and maintenance of public utilities. (An additional easement was requested to meet current standards.)

STAFF RECOMMENDATION: Accept the Dedication.

MOTION: To approve subject to staff recommendations.

MARNELL moved, **JOHNSON** seconded the motion, and it carried (12-0).

❖ **PUBLIC HEARINGS – VACATION ITEMS**

3-1. **VAC 2005-48: Request to Vacate an Easement Dedicated by Separate Instrument,**

CASE NUMBER: **VAC2005-00048:** Request to vacate a portion of a utility easement dedicated by separate instrument

OWNER: Wichita Collegiate School

AGENT: Young & Associates, c/o David Springob

LEGAL DESCRIPTION:

Generally described as that portion of the 20-foot utility easement (see attached legal) dedicated by separate instrument (Film 1156, Page 1947-1948, recorded February, 1991) located on Lot 1, Block 1, Country Walk 2nd Addition, Wichita, Sedgwick County, Kansas (WCC District #II)

LOCATION:

Generally located on the southwest corner of Webb Road and 13th Street North

REASON FOR REQUEST:

Expansion of existing building

CURRENT ZONING:

Subject property and abutting south, west and north properties are zoned "SF-5" Single-family Residential and "GO" General Office. Property east of the site is public right-of-way (ROW)

The applicant is requesting consideration for the vacation of the portion of a 20-foot wide utility easement dedicated by separate instrument as described. Per the applicant's exhibit there is a water line in that portion of the easement the applicant wants to vacate. There is no sewer line or manholes in the easement. Comments from franchised utilities have not been received and are needed to determine if they have utilities in the easement. The Country Walk 2nd Addition, was recorded with the Register of Deeds June 27, 1988.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works/Water & Sewer, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the utility easement dedicated by separate instrument as described in the legal description with the following conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
 1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time December 29, 2005, which was at least 20 days prior to this public hearing.
 2. That no private rights will be injured or endangered by the vacation of the above-described portion of the utility easement dedicated by separate instrument and the public will suffer no loss or inconvenience thereby.
 3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the portion of the utility easement dedicated by separate instrument described in the petition should be approved with conditions:
 - (1) Vacate only that portion of the easement dedicated by separate instrument as described in the legal description and as approved by all utilities. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.
 - (2) Provide a guarantee to relocate water line in the easement, per City Standards. Provide Water & Sewer/Public Works with all needed plans for review and approval to relocate water line.
 - (3) Retain the easement until all utilities have been relocated and provided with easement and/or any other conditions to be met are completed per the standards of all utility companies.
 - (4) If needed provide City Water & Sewer/Public Works with another easement. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to WCC for final action and subsequent recording with the register of Deeds.
 - (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
 - (6) All improvements shall be according to City Standards.
 - (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate only that portion of the easement dedicated by separate instrument as described in the legal description and as approved by all utilities. Provide Planning Staff the approved legal description of the vacated portion of easement, via e-mail on a Word document.

- (2) Provide a guarantee to relocate water line in the easement, per City Standards. Provide Water & Sewer/Public Works with all needed plans for review and approval to relocate water line.
- (3) Retain the easement until all utilities have been relocated and provided with easement and/or any other conditions to be met are completed per the standards of all utility companies.
- (4) If needed provide City Water & Sewer/Public Works with another easement. Provide Planning Staff with the original easement that has been reviewed and approved by Public Works/Water & Sewer; this document will go with the Vacation Order to WCC for final action and subsequent recording with the register of Deeds.
- (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (6) All improvements shall be according to City Standards.
- (7) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

DAVID SPRINGOB, YOUNG & ASSOCIATES, 100 S. Georgie, Derby, KS 67037 We are in agreement with staff recommendations.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **HILLMAN** seconded the motion, and it carried (12-0).

❖ **PUBLIC HEARINGS**

4. **Case No.: CUP2005-72 DP293 and ZON2005-54** – Northwest Free Methodist Church (owner); Baughman Company, PA, c/o Terry Smythe (agent) Request The creation of E.S. Development Midwest Commercial Community Plan; and Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

Lot 1, Block A, Agape Addition to Sedgwick County, Kansas, together with vacated 23rd Street adjacent on the North and vacated Crestline Road adjacent on the East.

as shown by the last deed of record filed in the Office of the Register of Deeds, Sedgwick County, Kansas, on the 15th day of November, 2005 at 7:00 A.M. Generally located East of Maize Road approximately 1/4 mile north of 21st Street North.

MAPC CONSIDERED AND DEFERRED JANUARY 5, 2006

In response to concerns and objections expressed by neighborhood residents during the MAPC meeting held January 5, 2006 and the District V Advisory Board meeting held January 9, 2006, the applicant has agreed to several additional restrictions on the development. These changes have been added to the "Recommendations" section and are highlighted in italics. Also, a modification of the setback discussed during the MAPC meeting is added. Please use this information when considering this case on January 19, 2006.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to replatting within one year and subject to the following conditions:

- A. APPROVE the zone change (ZON2005-54) to "LC" Limited Commercial subject to replatting of the entire property within one year;
- B. APPROVE the Community Unit Plan (DP-293), subject to the following conditions:
 1. Access shall be limited to one full movement and one right-in/right-out and be in compliance with the Access Management Policy.
 2. Increase the building setback on the north property line to *50 feet for the western 300 feet and 70 feet for the remaining distance; and retain, transplant or replace* the existing tree row of coniferous trees along the north and east property lines. *Provide solid evergreen screening (this is in addition to the solid eight-foot masonry wall).*
 3. Add to General Provision 7 F: and shall be spaced a minimum of 150 feet apart, with no sign allowed within 70 of the northern property line, and a maximum sign face area of 264 square feet (0.8 times lineal frontage) cumulative for the CUP.
 4. Change General Provision 9 A: Limited height of light poles including fixtures, lamps and base to 24 feet except within 100 feet of residential zoning districts and on the rear wall of buildings adjoining residential zoning districts lighting (building wall units and freestanding standards) shall be limited to 15 feet in height, including poles, fixtures, lamps and base, and shall have directional shielding to prevent light spillage onto residential zoning districts and otherwise comply with General Provision 8.
 5. Add to General Provision 14: with materials similar to the exterior materials of the main buildings. *Trash haulers shall not be permitted to pick-up trash in receptacles or dumpsters prior to 8 a.m. each day.*

6. Add to General Provision 15: Metal shall not be used as the predominant exterior material on any façade and shall not be permitted as the exterior material above the height of the screening wall except for trim for facades directly abutting residential zoning.
7. Add to General Provision 17: Conditional uses shall be permitted only if approved by a CUP amendment.
8. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
9. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for commercial development and be binding upon the present owners, their successors and assigns, unless amended.
10. All property included within this CUP and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
11. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-293) includes special conditions for development on this property.
12. The applicant shall submit 4 revised copies of the CUP to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.
13. *Change General Provision 12 to require a screening wall eight feet in height instead of six feet.*
14. *Change General Provision 17 as follows: Delete these uses from the prohibited uses: group home, limited; group home, general; and group home commercial. Add these uses to the prohibited uses: hotel and motel, nursery and garden center; wireless communication facility. Prohibit restaurants with drive-in or drive-through windows on the northern 150 feet of the CUP. Use noise mitigation techniques including ambient noise reduction order boards and/or evergreen plant materials to reduce noise.*

Please add this statement to "Findings":

6. Opposition or support of neighborhood residents: Neighbors expressed opposition to the development due to objections ranging from types of use (specifically drive-in/drive-through restaurants, nursery and garden centers and hotels, loss of open space, increased noise, lights, trash, and traffic, and view of commercial uses from backyards. The applicant has offered additional restrictions in an effort to address these concerns and neighborhood opposition.

MCKAY Is the public hearing still open from the last time we considered this application? Or did we close the public hearing?

WARNER I think the public hearing is closed.

BISHOP When we deferred the last time I was the motion maker, and I was specifically asked if that meant that we weren't going to continue the public hearing, and my response was that I am not making that part of my motion.

WARNER We will listen to Item 4.

GOLTRY You will note in your packet the memo from me that is attached to the original staff report, which will explain the processes, and the changes in recommendations from the original staff report that have occurred to this point. These changes have been added to the "Recommendations" section and are highlighted in italics, condition B(2), B(5), B(13) and B(14). There is also a DAB memo explaining the action that was taken at their meeting on January 9, 2006. We have received two official protest petitions.

MCKAY You have protest petitions just from those two property owners?

GOLTRY So far. There is more time for protest petitions to be received.

WARNER I am looking under the background, and if I am reading this right, this will allow for a recycling collection station?

GOLTRY Yes, that is a permitted use now, but can be removed by action of MAPC.

TERRY SMYTHE, Baughman Company, 315 Ellis, Wichita, KS In the minutes of the meeting from the last time was a summary of what happened. We agreed to the no recycling collection station, we don't want that in there. The DAB will reconsider this case prior to proceeding forward to the Wichita City Council.

I consider this development an infill, and an expansion of the existing commercial to the south. We voluntarily provided a CUP on this zone change case so that we could further restrict ourselves in a nice, clean, clear, precise method with the drawing. So we did that, and eliminated a number of uses. To a large degree, I think most of our mitigation measures are much more restrictive than all the previous zone change cases and CUP cases that we have done in the past. Some meet the standard of the CUPs, but a lot of ours exceed those standards. We eliminated over 40 uses. We have limited the location of the drive-thru down to the south end next to the automotive center existing today, to our south. We have increased the height of the screening wall to 8 feet. We have increased the building setback line along the north and east side from the 35-foot standard to a 50-foot, and 100-foot standard, and 75-foot on the north. We have exceeded the landscape requirements. We have agreed to lower the heights of all of the lights and shield them all downward. We have committed to trash pick-up hours. We have also agreed to a sound dampening order board or a partition, and we have also said that the drive-thru order board will not face to the north. The sound dampening order board is starting to become very popular these days. Based upon outside noise levels, it will decrease at night when it gets quieter; the board will go quieter. We also agreed to architectural compatibility and the heights standards.

Currently in place there are several City of Wichita codes that all these developments have to abide by anyway: lighting controls, noise controls, access management policies, the nuisance codes, public safety, odor regulations and commercial garbage control. So, all those are in addition to what we are currently proposing and are exceeding.

I have spoken about all the other CUPs and commercial zoning that has occurred east and west near residential areas, and gave intersections of arterial streets (referring to Mr. Smythe's comments at the previous MAPC meeting). This time I have tried to limit my discussion to the ones I know that residential people have been living around before the commercial use came in, maybe another infill type project. The Outback Steak House down at Ridge Road, the southeast corner of Maple and Ridge Road. The old 4-H Complex where Schofield Hondo and all the car lots are around there that was a very, very large CUP that has homes to the east and to the north. I think of 13th and Ridge Road, Sluggers, and SSI irrigation building, I believe were rezoned after the homes were in there. You have storage units at Douglas and Maize Road, and storage units behind the 21st Street and Tyler strip centers that I believe tap into the residential to the south, and storage units and a car wash that were permitted at the 53rd and Meridian northeast corner with homes nearby. The southeast corner of Central and Maize where Southwestern Bell has a terminal building, I think there is a car maintenance facility. Some of those uses have been increased with some of the homes around it. You will be considering today a strip center that is going to go along Kellogg and Dubon and Westfield; it will back up to single-family homes. I had a duplex zone change there about six months ago, just on the north side of Dubon Street. Roughly, on the east side you have a hotel at 32nd and Rock Road that backs up to residential districts. You have the car wash at 32nd and Rock Road that backs up to residential homes. Home Depot around 32nd and Woodlawn does the same thing. The Tallgrass Shops at 21st and Tara, which is 21st and Rock Road, there is some development there that backs up to retail commercial shops.

We agree to the revised staff comments. I appreciate the neighbors' input. I think I have attempted to get all their comments that they have given us into our restrictions and requirements.

BISHOP The drive-thru window, I note there is an addition prohibition that has been added to the recommendations that would prohibit such in the northern 150 feet. What about the eastern portion of the lot? There are not any indications that there is any prohibition on the eastern portion that is also close to single-family homes. Do you have a specific location for the drive-thru on the layout?

SMYTHE That is true. The way that we described it, we were going to prohibit drive-thru and drive-ins on the north, roughly half, of our entire property. I think the last time we were here we discussed where we wanted to put the drive-thru.

BISHOP I recall that, and it seems to me that it was close to the southwest corner.

BRAD SAVILLE, Agent of the applicant That is a good question; the east side of the property could be prohibited against drive-thru speakers, probably not necessarily pick-up windows or pick-up doors because people are doing call ahead, or whether it was a dry cleaners or things. But the exterior speakers, which are the main concern of drive-thru, could be eliminated on the east part of the development.

BOB TROILO, 10109 STERLING CT., WICHITA, KS 67205 When this rezoning request was here at the last MAPC meeting and today, the developer cited a number of residential areas that abut commercial property. What the developer fails to mention is that many of those communities built up to, such as Evergreen, up to commercial property knowing that they were doing so. This is a huge difference. When I bought my home two years ago the church lot was zoned "SF-5" and was developed for years. Many of my neighbors believed that the church would be a buffer for the commercial development to the south. The building of at least two restaurants and a strip mall, which could also include restaurants near the residential boundary, will be a negative impact to the neighborhood. Light pollution, noise pollution, smell and dumpsters will cause the property values to drop. Under the developer's plan, you will have children playing in their backyards a short distance from these dumpsters, exposing them to the associated health risk needlessly. We are not developers. We are homeowners. However, the developer did say that he could put 2-3 homes in that property, and that sounds to me like the developer does have an alternate plan. Perhaps a L-shape strip mall with smaller daytime retail businesses excluding restaurants might be a compromise. Perhaps the City could buy this property and turn this into a green area or park. At the DAB meeting the broker attempted to lecture the homeowners on the fact that the church has a right to protect their investment and make as much money on their investment that they can. Yes the church does have rights, just as the neighbors have rights, and I don't think anyone begrudges the church trying to make a profit off the property that they have owned since 1974. Unless they give the property away, they are going to make a profit. There needs to be a compromise. I urge you to deny this request.

MAURY RICHMEIER, 10113 STERLING CT., WICHITA, KS 67205 I support everything my neighbor just said. Yes, the church does have the right to make as much money on this property as they can, but not at our expense. They also have a right to move to a quieter place, but not at our expense.

JAY SCHWEIKERT, 2367 N. CRESTLINE CT, WICHITA, KS 67205 The point that I would like to make is that we are not here to deny the church the right to sell, but this is a zoning issue, so it does become a public rights issue. The one thing that has not been said at all these meetings that worries me is what is the drainage plan. The drainage is on the east end of the development, and we don't hear any plans of what is going to happen to the drainage. There are several empty commercial buildings up there that could be utilized.

WARNER Public hearing closed. Two-minute rebuttal from the applicant.

TERRY SMYTHE I think we have attempted to address everything that we possibly can and then more so than we have ever done on the piece of property. This is land that is being in-filled. These are the issues that are always going to come up when you go after property that historically has been overlooked throughout the years, or areas have transformed from the quiet area that was out there long before NewMarket Square came up; it has changed. I understand that. I have K-96 Highway behind my house and my quietness has changed as well. I think we have put together a CUP to be as restrictive as it possibly can and still make things happen. The issues of the dumpsters, there is a potential for all that stuff to happen, but there are nuisance codes and requirements that can be and should be enforced at all times. That is what they are there for. We will do our best to put the dumpsters as far away from the residential homes as we can because we want to be a good neighbor.

BISHOP Could you put a specific distance as far as prohibiting drive-thru restaurants on the eastern portion of the lot? I am not sure what the distance east to west is, so I am not sure what to suggest.

SMYTHE I thought Mr. Saville had indicated that the drive-thru/drive-ins would be on the west half of the property. He just wanted to clarify that on the east half of the south half, that there are facilities nowadays that have drive-up windows, like dry cleaners, those kind of things, that he still wants to have the ability to do that, but the order boards and that stuff will be contained on the west half of the south half of the property near Maize Road.

BISHOP So a drive-thru restaurant with an outdoor order board would be west of the mid-line, the north-south midline?

SAVILLE I think the terminology that they are using now is fast food or quick service for a lot of these, and we will say there is no fast food or quick service restaurants on the eastern portion of the building. Those are the ones that have the regular traffic; what is becoming popular, and there are no plans for this at this time. But there are people that are using the call-ahead program, where they come out to your car, they have a conversation with you, and bring you your food, or bring you your merchandise, not just restaurant. But we will agree to limit no fast food or quick service with drive-thru on the eastern portion.

MITCHELL On the DAB report, the second paragraph is attributed to you. And the last sentence stated, you explained that the drainage from backside will be directed to storm water and will be assured by the City Engineer during the platting process.

SMYTHE All the issues with the drainage will be reviewed and agreed upon during the platting process. My statement was that there is some potential to do some storm water detention to the back, and to hook the back up to some storm sewer pipes in Maize Road. Whether we can handle it all in pipes or we have to detain it, the issue is that it is all going to come to the front.

MITCHELL It will all stay on this property or it will go to a public storm sewer?

SMYTHE Correct.

SHERMAN Could you clarify the wall, you said there is an increase in your willingness to do something?

SMYTHE Generally on CUPs it is required to have a 6-8 foot wall. We have committed that we will build an 8-foot solid concrete screening wall.

SHERMAN The trees go where?

SMYTHE The trees will go behind the wall.

SHERMAN Which is to the neighbors?

SMYTHE No, it would be on our side of the property. That is always required by code. We wouldn't be allowed to plant trees on someone else's property.

MOTION: To approve staff recommendation with the changes that were referred to today that came out in the DAB meeting in the staff comments.

MCKAY moved, **DOWNING** seconded the motion.

BISHOP I am going to support the motion. I feel like we have gotten as much from the applicant to work with the neighbors as we are going to be able to. I realize there are other choices that could be made for that lot, but I don't know if we deny this application that we will have any guarantee that any proposed development would be any more favorable. I have driven out there, and I think by restricting drive-thru restaurants, and I hope that we have made the record clear, not other types of drive-thru that are less noisy and messy, but drive-thru restaurants, will be restricted pretty much to the southwest corner.

DUNLAP I will support the motion also. I worry a little about setting a precedence and thought I would object strongly, but I thought, well, it could be handled with a contract. This is the first time that I have ever known of anyone restricting when someone else's business could do business on this property, i.e., picking up trash specifically. I don't know any other time that we have said you can't deliver bread, deliver milk, pick-up trash, or do something. The developer is taking that responsibility when he doesn't own that business. I thought you can't do that but really you can, because you can say to the service provider that if you want this contract that is what you have to do. I think that is a bad precedence.

MCKAY That can be taken care of in a restrictive covenant for that one piece of property.

DUNLAP It could be. But we are not doing that here.

MCKAY It is very simple to do and you can say you can do this and you can't do that and it will be applicable to everyone on that property.

DUNLAP That is right, but we are not doing that here.

MCKAY Basically I am saying that can be taken care of, and your concern can be taken care of, by the developer in a restrictive covenant.

HILLMAN This has been a long and hard fought battle, and I do appreciate the accommodations of the developer. I think it is pretty well said that this is going to be approved.

MOTION carried 11-1 (HILLMAN opposed)

5. **Case No.: ZON2005-52** – John E. Dugan, Marilyn K. Dugan & John E. Dugan Family Partnership, LP (owner); K.E. Miller Engineering, PA, c/o Kirk Miller (agent) Request Zone change from “LC” Limited Commercial to “GC” General Commercial with a Protective Overlay on property described as;

Parcel 1:

Part of Lots 1, 2 and 3, Block H, Westport Addition to Wichita, Sedgwick County, Kansas described as:

Beginning at the northeast corner of Lot 1, Block H, Westport Addition; thence bearing S 00 degrees 00'00" E along the east line of said lot, a distance of 125.92 feet; thence bearing S 65 degrees 57'30" W parallel with and 115 feet south of the north line of said Block H, a distance of 396.48 feet to the east line of Lot 1, Block 2 Davis Moore 12th Addition to Wichita; thence bearing N 00 degrees 00'00" E a distance of 125.92 feet to the north line of Block H, Westport Addition; thence bearing N 65 degrees 57'30" E, along the north line of said Block H, a distance of 396.48 feet to the point of beginning.

Parcel 2:

Part of Lots 1,2,3,4, 5 and 6, Block J, Westport Addition to Wichita, Sedgwick County, Kansas described as:

Beginning at the northwest corner of Lot 6, Block J, Westport Addition; thence bearing N 65 degrees 57'30" E along the north line of said Block J, a distance of 600.00 feet to the northeast corner of Lot 1, Block J; thence bearing S 00 degrees 00'00" E along the east line of said Lot 6, a distance of 133.59 feet; thence bearing S 65 degrees 57'30" W, parallel with and 122 feet south of the north line of said Block J, a distance of 600.00 feet to the west line of Lot 6, Block J; thence bearing N 00 degrees 00'00" E along the west line of said Lot 6, a distance of 133.59 feet to the point of beginning.

Parcel 3:

Part of Lots 1,2,3,4, 5 and 6, Block K, Westport Addition to Wichita, Sedgwick County, Kansas described as:

Beginning at the northwest corner of Lot 6, Block K, Westport Addition; thence bearing N 65 degrees 57'30" E along the north line of said Block K, a distance of 600.00 feet to the northeast corner of said Lot 1; thence bearing S 00 degrees 00'00" E along the east side of said Lot 6, a distance of 136.87 feet; thence bearing S 65 degrees 57'30" W, parallel with and 125 feet south of the north line of said Block K, a distance of 600.00 feet to the west line of said Lot 6, Block K thence N 00 degrees 00'00" E along the west line of Lot 6, a distance of 136.87 feet to the point of beginning.

Parcel 4:

Part of Lot 1, Block 2, Davis Moore 12th Addition to Wichita, Sedgwick County, Kansas described as:

Beginning at the northeast corner of said Lot 1; thence bearing S 00 degrees 00'00" E along the east line, a distance of 125.92 feet; thence bearing S 65 degrees 57'30" W parallel with and 115 feet south of the north line of Lot 1, a distance of 75.55 feet; thence bearing S 82 degrees 39'27" W, a distance of 52.20 feet; thence bearing N 42 degrees 19'29" W a distance of 53.19 feet to a point on a non-tangent curve to the left having a radius of 377.00 feet and a chord bearing of N 01 degrees 49'19" E; thence along said curve, on the west line of said Lot 1; through a central angle of 03 degrees 32'33", an arc distance of 23.31 feet; thence bearing N 00 degrees 00'00" E along the west line of said Lot 1, a distance of 31.22 feet to the northwest corner of said Lot 1; thence bearing N 65 degrees 57'30" E along the north line of said Lot 1, a distance of 170.67 feet to the point of beginning. Generally located North of Kellogg between Byron Road and Seville Avenue.

BACKGROUND: The applicant requests a zone change from “LC” Limited Commercial to “GC” General Commercial with a protective overlay on 3.19 acres, plus a protective overlay on 2.03 additional acres of existing “GC” General Commercial zoning. Total site size is 5.22 acres.

The property is a narrow strip of land approximately one-third mile long but only 120 feet deep. It flanks the north side of Kellogg Drive and is bounded on the north by Dubon Avenue, an unpaved road. Its eastern edge is located at Byron Road (approximately one-sixth mile west of Tyler Road), and the property extends westward to Seville Avenue. It currently includes two platted rights-of-way, Westfield Avenue and Keith Avenue.

The current zoning pattern is comprised of a row of 80-foot lots. Eleven lots (including two that are wider than 80 feet) are zoned “LC” and five lots are zoned “GC”, but the “GC” lots are interspersed between the “LC” lots. The extremely shallow depth of the lots and the interspersed zoning pattern challenge the effective use of the property. The applicant has sought to unify the property by eliminating the intervening streets (Westfield Avenue and Keith Avenue), obtaining “GC” zoning for the entire property, reducing the rear *building* setback to 0 feet, and making the entire property subject to the protective overlay provisions. The property could be developed without this approval and with the standard 10-foot *building* setback on the “LC” zoning and 0 feet on the “GC” portions.

The protective overlay would require architectural compatibility among the buildings, with no predominately metal façades. The rear of the buildings and a matching solid masonry wall eight feet in height *with a setback of 20 feet* would be constructed along Dubon Avenue and would not have visible doors, windows, or utility meters in order to mitigate the impact on the residential neighborhood to the north. Trees would be placed on the property or within the right-of-way of Dubon as an additional type of buffer, and signs would be prohibited on the residential side of the buildings. Lighting would be standardized and it is recommended that only wall units be permitted on the back side of the building and that these be lowered and shielded to mitigate the impact.

Prohibited uses would be group residence, correctional placement residence (limited and general), group home (limited, general, and commercial), communication tower (commercial), kennel (boarding/breeding/training, and hobby), night club, riding academy or stable, tattooing and body piercing facility, tavern and drinking establishment, outdoor vehicle repair, asphalt and concrete plant, gas

and fuel storage, rock crushing, and solid waste incinerator. The property would retain auto and highway oriented uses typical of the Kellogg corridor.

The surrounding property is developed in a starkly contrasting manner. The property to the north and northwest is a suburban residential area with large lots on property zoned "SF-5" Single-family Residential. The property to the south and southeast of Kellogg is high intensity auto-related commercial uses and includes an agricultural sales and service, RV and truck vehicle sales, equipment rental and a flea market on property zoned "GC". The property to the east is vacant except for a restaurant on the southwest corner of the Kellogg interchange at Tyler Road. It is zoned "SF-5", "LC" and "GC"; the property was approved for commercial development as DP-268 Holland Commercial but is still awaiting platting (and a second platting extension was made to February 6, 2006).

CASE HISTORY: The subject property is platted as Westport Addition, recorded May 28, 1953.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5"	Residential development on large lots
SOUTH: "GC"	Auto-oriented and highway-oriented retail
EAST: "SF-5", "LC", "GC"	Vacant (approved for CUP but not platted), restaurant
WEST: "SF-5"	Single-family residences

PUBLIC SERVICES: Kellogg Drive is a one-way westbound frontage road with two through lanes along the property. Kellogg Drive is the primary access to the property. Seville Avenue forms the western boundary; it is a north-south urban collector street that connects between Kellogg Drive and Maple Street approximately three-fourth mile to the north. Belview Avenue is a short east-west urban collector street that begins at Tyler and ends at Seville Avenue. Dubon is an unpaved street on sixty feet of total right-of-way. The majority of traffic from the site would be expected to exit the site by continuing westbound on Kellogg Drive to Maize Road and then proceeding north on Maize Road, west on Kellogg (US 54-400) or using the U-turn under Kellogg to return eastbound. The main traffic onto Seville would be traffic bound for destinations in the area to the north of the site and east of Maize Road. The estimated traffic from the site is hard to predict since auto-oriented and highway-oriented uses tend to be lower traffic generators than typical general retail and lower than banks or restaurants. A very high estimate based on the standard shopping center types of uses would be approximately 3,000 vehicles per day, but it is more likely to be much lower, perhaps in the 1,000 to 1,500 vehicles per day at full build-out. The location of the site along Kellogg should be able to accommodate these volumes easily; the main concern is to discourage traffic through the residential neighborhood to the north. Staff will recommend complete access control on Dubon Avenue during platting.

All other public services are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan indicates that the site is appropriate for "regional commercial" development. This classification encompasses major destination areas containing concentrations of commercial, office, and personal service uses that have a predominately regional market areas and high volumes of retail traffic. These areas are to be located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships, and big box retail outlets with a regional market draw. The requested zone change is in conformance with the *Comprehensive Plan* "Wichita Land Use Guide," designation of "regional commercial" but the site is too narrow to accommodate the large-scale uses found in this classification and would be more suited to small to medium scale highway-oriented uses.

Commercial Objective III.B encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials. The proposed protective overlay is in general conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines. The proposed protective overlay adds provisions to allow development of the property in a less intrusive manner to the nearby residential area.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends the zone change from "LC" to "GC" be APPROVED, subject to replatting the entire property and subject to the following protective overlay provisions for the entire property:

- (1) The development parcel contains 5.22 net acres, more or less.
- (2) Restricted uses: group residence, correctional placement residence (limited and general), group home (limited, general, and commercial), communication tower (commercial), kennel (boarding/breeding/training, and hobby), night club, riding academy or stable, tattooing and body piercing facility, tavern and drinking establishment, outdoor vehicle repair, asphalt and concrete plant, gas and fuel storage, rock crushing, and solid waste incinerator.
- (3) The transfer of title on all or any portion of the land included in the development does not constitute a termination of the overlay or any portion thereof; but said overlay shall run with the land for development and be binding upon the present land owners, their successor and assigns and their lessees unless amended. However, the Planning Direct, with concurrence of the Superintendent of Central Inspection, may approve minor adjustments to the conditions of the overlay, consistent with the approved development plan, without filing a formal ordinance amendment.
- (4) Landscape and Parking Lot Screening – Shall be in accordance with the City of Wichita Landscape Ordinance, including but not limited to a landscaped street yard and parking lot landscaping and screening along Kellogg Drive, Seville Avenue and Dubon Avenue. Additionally, the rate of plant materials on Dubon Avenue shall be calculated at a rate of one shade tree required per 40 feet of lineal frontage along Dubon, with this requirement being met by a minimum of at least one-third evergreen plant material; two ornamental trees or ten shrubs shall be equivalent to one shade tree and may be substituted for shade trees except that no more than one-third of the total requirement may be met by shrubby plant material. A landscape plan, prepared by a Landscape Architect licensed in the State of Kansas, indicating the location, type, and specification of plant material shall be submitted to the planning department for its review and approval prior to the issuance of any building permit(s). The site shall be screened along Dubon Avenue by way of building walls and solid

screening walls. Building walls seen from ground level along Dubon Avenue shall not have visible windows, doors, or utility meters or boxes, but shall give the appearance of solid masonry screening wall of the same material, texture and color as the buildings walls and be connected to the buildings walls. The screening walls shall be a minimum of 8' in height and set back at least 20' from the right-of-way. Landscaping will be required along Dubon Avenue and shall be in accordance with the City of Wichita Landscape Ordinance, except that Dubon Avenue right-of-way may be used for meeting the landscaping requirements; any improvements in the right-of-way shall require review by Public Works, and may require a minor street privilege.

- (5) Minimum Setback Requirements: front setback - 20 feet; side setback – 0 feet; rear setback – 0 feet *for building; 20 feet for screening wall.*
- (6) All signs shall be per Wichita Sign Code for property zoned "LC". No portable or off-site signs allowed. No signs shall be allowed on the north side of the buildings, facing Dubon Avenue, nor on the west façade facing Seville Avenue except within the southernmost 20 feet of the façade.
- (7) Parking – Shall be in accordance with the Wichita-Sedgwick County Unified Zoning Code ("UZC").
- (8) Architectural Control – All buildings shall have the same predominate exterior building materials with consistent architectural character, color and texture, and consistent lighting design (fixtures, poles, lamps, etc.) as approved by the Planning Director. There shall be no predominately metal façades on any buildings. Light standards shall be a maximum height of 25 feet and consistent in pole and fixture throughout the development. No freestanding light standards shall be allowed on Dubon Avenue; building wall lighting shall be limited to 15 feet in height and shall have directional shielding to prevent light spillage onto residential zoning districts.
- (9) An owners association agreement providing for the maintenance of reserves, open spaces, internal devices, parking areas, drainage areas, etc. shall be filed by the time the plat is filed of record.
- (10) All drainage ways and easements shall be determined at the time of platting.
- (11) Loading areas, trash receptacles, outdoor storage, and docks shall be screened from ground level view. Mechanical equipment on top of buildings shall be screened to the height of the unit. Screening of all trash dumpsters and mechanical equipment will be constructed to match the buildings they support and no trash dumpsters shall be allowed along Dubon. Outdoor storage shall be screened such that no stored material protrudes above the top of the screening. In those cases where these requirements are more stringent than the UZC, it shall be deemed that these requirements shall govern.
- (12) The development of this property shall proceed in accordance with the development plan as recommended for approval by the Metropolitan Area Planning Commission and approved by the Governing Body, and any substantial deviation of the plan, as determined by the Zoning Administrator and the Planning Director, shall constitute a violation of the building permit authorizing construction of the proposed development.
- (13) Outdoor speakers and sound amplification systems shall not be permitted on the site.
- (14) Maximum height – 35 feet; maximum building coverage – 30 percent; maximum gross floor area – 35 percent.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding property is developed in a starkly contrasting manner. The property to the north and northwest is a suburban residential area with large lots on property zoned "SF-5" Single-family Residential. The property to the south and southeast of Kellogg is high intensity auto-related commercial uses and includes an agricultural sales and service, RV and truck vehicle sales, equipment rental and a flea market on property zoned "GC". The property to the east is vacant except for a restaurant on the southwest corner of the Kellogg interchange at Tyler Road. It is zoned "SF-5", "LC" and "GC"; the property was approved for commercial development as DP-268 Holland Commercial but is still awaiting platting (and a second platting extension was made to February 6, 2006).
2. The suitability of the subject property for the uses to which it has been restricted: The current zoning pattern is comprised of a row of 80-foot lots. Eleven lots (including two that are wider than 80 feet) are zoned "LC" and five lots are zoned "GC", but the "GC" lots are interspersed between the "LC" lots. The extremely shallow depth of the lots and the interspersed zoning pattern challenge the effective use of the property. The applicant has sought to unify the property by eliminating the intervening streets (Westfield Avenue and Keith Avenue), obtaining "GC" zoning for the entire property, reducing the rear *building* setback to 0 feet, and making the entire property subject to the protective overlay provisions. The property could be developed without this approval and with the standard 10-foot *building* setback on the "LC" zoning and 0 feet on the "GC" portions.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The protective overlay would require architectural compatibility among the buildings, with no predominately metal façades. The rear of the buildings and a matching solid masonry wall eight feet in height would be constructed along Dubon Avenue and would not have visible doors, windows, or utility meters in order to mitigate the impact on the residential neighborhood to the north. Trees would be placed on the property or within the right-of-way of Dubon as an additional type of buffer, and signs would be prohibited on the residential side of the buildings. Lighting would be standardized and it is recommended that only wall units be permitted on the back side of the building and that these be lowered and shielded to mitigate the impact.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan indicates that the site is appropriate for "regional commercial" development. This classification encompasses major destination areas containing concentrations of commercial, office, and personal service uses that have a predominately regional market areas and high volumes of retail traffic. These areas are to be located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships, and big box retail outlets with a regional market draw. The requested zone change is in conformance with the *Comprehensive Plan* "Wichita Land Use Guide," designation of "regional commercial" but the site is too narrow to accommodate the large-scale uses found in this classification and would be more suited to small to medium scale highway-oriented uses. **Commercial Objective III.B** encourages future commercial areas to "minimize detrimental impacts to other adjacent land uses", with **Strategy III.B.1** seeking to channel new strip commercial uses to areas identified on the "Wichita Land Use Guide", and **Strategy III.B.2** seeking to integrate out parcels to planned centers through shared internal circulation, combined signage, similar landscaping and building materials, and combined

ingress/egress locations. **Commercial Locational Guideline #3** of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials. The proposed protective overlay is in general conformance with the Comprehensive Plan commercial objective/strategies and land use locational guidelines. The proposed protective overlay adds provisions to allow development of the property in a less intrusive manner to the nearby residential area.

5. Impact of the proposed development on community facilities: Traffic volumes should accommodate easily along Kellogg Drive; the main concern is to discourage traffic through the residential neighborhood to the north.

GOLTRY This case was originally scheduled to be heard in late December at MAPC. But, instead of being heard in late December, the agent chose to delay bringing it forward to MAPC so that it could go to the DAB first, because initially we had a fairly significant volume of calls from the neighbors. So we thought a lot of the comments would come from the neighborhood at the DAB meeting. It turns out that we had very minimal comments at the DAB meeting. The one question that did come up was on the issue of whether or not to pave Dubon Road, which was not something the staff report had even addressed directly, to say you should or shouldn't, but it would be an item for discussion during the time of platting. There are a number of reasons for that. In my mind, I can see that paving Dubon will benefit the property owner, even if he does not have direct access to it because it will allow a back door (leaving) exit from the property. So there will be some benefit to the property owner himself from the paving Dubon. There will also be some benefit to the neighbors to the north. But, it would require a paving petition, and you would have to get a 50% petition before it was activated. The act of paving Dubon will increase traffic along that road, which will increase the traffic between the residential and the commercial use. If you want to discuss this issue in further detail and come up with a recommendation, I will lay that on the table for discussion before you.

This morning we received an e-mail from one of the neighbors that said she is in opposition to this request. The comments are provided to you today. She seemed to base her comments on the closing of Dubon, but Dubon is not going to be closed. I think that misunderstanding stems from an earlier zoning case when that was under discussion, about whether or not they would close Dubon Road all together. I will let the agent respond to that if he would like to.

MCKAY There will be a wall between the residential on the south side of Dubon, the full length of this property?

GOLTRY It can be a combination of building, then screening wall, then building, then screening wall along the property line to break up the monotony of the wall.

MCKAY There will be no direct access to this property off of Dubon from Seville to Byron?

GOLTRY That is my understanding, yes.

MCKAY The frontage road is what I am saying.

GOLTRY If you look back at the road network, it is a one-way frontage road. What you can do is when you are leaving it, you can come down this way (pointing to Kellogg Drive and traveling westbound), and then you have a decision to make at Seville. Do you continue on the frontage road over to Maize Road, which is another half mile, which is the most logical and efficient way to go if you are going anywhere to the north and to the west, or do you go back up Seville. Then, do you go to Maple (pointing on map at traveling north on Seville to Maple), or as far to Belview and cut through (pointing at traveling east on Belview). The third option is to double back on Dubon. You will have some localized traffic. I have spoken with the traffic engineer about this. We were thinking that there are a couple of square miles of residential feeder area to the direct north and northeast that may bring some traffic to cut through the neighborhood, but the vast majority of traffic is going to be bound more northwest or back to the east, and so they will use the Kellogg freeway.

MCKAY I know this is probably a platting question, but the west edge of this strip of ground, is there going to be an entrance?

GOLTRY On the very west edge, on Seville? I didn't believe so.

MCKAY You talked about the exit out of the property, but if the only entrance is on the one way, how are they going to get into it?

GOLTRY They get into it from the Tyler Road entrance to Kellogg Drive at Tyler and Kellogg, and you follow the frontage road westbound. That is the only way in.

BISHOP I would like to ask about the Protective Overlay, and the fact that an attempt has been made to wall off, in a more or less attractive way, toward Dubon. Is there any allowance for pedestrian access? Let's say there is a business right in the middle of this that is a neighborhood friendly business that folks would like to walk to and patronize.

GOLTRY I think the way that it is structured right now, it would require at least an adjustment to allow a pedestrian entrance through the screening wall. If the MAPC would want to add this, there could be some sort of a gate put in the screening wall sections that would allow some access. That is kind of the way we handled the College Hill Planned Unit Development.

KIRK MILLER, K.E. MILLER ENGINEERING, P.A. Agent on the project. I have a copy of the letter, also, the property owner out there sent. It looks like a lot of her concerns have to do with if we were to close Dubon Street. Initially when we were looking at this property and met with the staff, we thought it was a very narrow strip of land, it varies from 115 to 125 feet, and it would be nice to have some extra land. So we asked is there any way that we can vacate Dubon Street. We talked to the staff. They said if you can get all the neighbors to agree to it, then you can proceed with that option. We talked to a number of the neighbors, mainly the ones that had garages fronting onto Dubon, and we basically got a "no" out of them. So we decided to abandon the idea of vacating Dubon Street. I think that is most of what her comments had to do with, was vacating Dubon Street. As far as the access onto Seville, it is only about 115-feet. I don't think there is any way that Traffic Engineering would let us access Seville. I don't think that is an issue, and I don't think that we are going to ask for it at the time of platting. We just assumed to address the paving of Dubon at the time of platting. What we are looking at is trying to develop this into a commercial type of use. At this time, we don't have any

known users. The owner of the property is planning on just building a building at this point, trying to lease it out, and kind of proceeding along as it develops. If we can't proceed with what we have here, we have current zoning of "LC" Limited Commercial and "GC" General Commercial and the uses that he is looking at right now are primarily "LC" Limited Commercial anyway. We could probably turn buildings sideways, and that type of thing, and make something work out there. But we think a better looking development would be more of a longer narrow strip than a bunch of buildings that sit out (by themselves).

MITCHELL Have you considered what would happen if, at platting, an additional 10-feet of street right-of-way were requested?

KIRK MILLER We would object to that condition. We don't have enough room to do that.

MITCHELL Have you spoken to anyone about paving Dugan on the 60 feet that is there?

KIRK MILLER No, we have not.

HENTZEN Does the owner of this strip also own over on the west side of Seville to the Cowskin?

KIRK MILLER That is Kellogg right-of-way. He owns just from Byron to Seville.

JIM BARBOUR, 1355 S. KEITH, WICHITA KS 67209 I really have no objections on the paving, but you require 51%. I can tell you about 80% of the people there are retired. And, they are on a fixed income and can't handle an increase in property tax.

BART BROWN, 1359 S. KEITH, WICHITA KS 67209 I would like to address the wall, and pertaining to the wall, we know the buildings are going to go up. As far as traffic, and that street (pointing to Dubon), that street is not very wide and parking is going to be an issue for any vehicles that are coming to these stores. In addition to the commercial traffic, you are going to have the employees. If parking is an issue now, where are they going to park? Are they going to park along Dubon? Our access is pretty hindered now because, right now with that dirt road, the houses that back up to Dubon, their side access to the south, they use Dubon to get in and out of their homes. If you go putting cars in there, it will be even more congested if there is a walkway on and off the commercial property. If that is a solid wall and there is no way in there, that might eliminate some of that traffic that will come along with it. I know employees, and they will use that in the future.

CAROLINE WILLIAMS, 1364 Seville, Wichita, KS 67209 I am right there on the corner of Seville and Dubon. I am not speaking in opposition, but you didn't ask if anybody was indifferent. I do appreciate all of the comments from the applicant and Donna bringing up the information about paving up the street, and that came from the DAB meeting, from my husband. I would like the applicant/agent to consider paving that street, with backing up whatever building is there. It is going to make that dirt road a lot more narrow, and that is the access to our home, as well as the detached garage.

KIRK MILLER From what I understand, the issues discussed so far are access and pedestrian access through a wall. And, our plan is still a solid wall. We are not planning on letting people park on Dubon, and having doors for them to cross through to get over through there to businesses. I think we should have plenty of parking out front to take care of that.

MOTION: To approve per staff recommendations.

HILLMAN moved, **HENTZEN** seconded the motion.

BISHOP I would just like to say, that I would still like to see something listed that would make a possibility for an adjustment to have pedestrian access through the solid wall, at some point right in the middle would be good. If it were necessary for that adjustment to go along with a no parking stipulation along Dubon, then that might address the concern of the resident, which I think is valid one, of Dubon being used for employee parking.

BARBARA BARBOUR, 1355 S. Keith, WICHITA KS 67209 I realize that your drainage concerns are addressed at platting but I would like for it to be on record that we are concerned in our area about the back-up of water. As it is now without any walls or any buildings, we have a very poor drainage system and it has not been addressed adequately. And as homeowners, we are concerned and would like to know that this is going to be taken care of by the owner/developer.

MOTION: carried 10-0.

6. **Case No.: ZON2005-57** – Midwest Conference Evangelical Covenant Church (applicant), Legend Development, c/o Tim Buchanan (applicant), MKEC Engineering c/o Greg Allison (agent) Request Zone change from "SF-5" Single-family Residential to "GO" General Office with a Protective Overlay on property described as;

Lot 1, Block 1 together with Reserve N, Remington Place, an Addition to Wichita, Sedgwick County, Kansas. Generally located South of East 21st Street North and west of Cranbrook.

BACKGROUND: The applicant requests a zone change from "SF-5" Single-family Residential to "GO" General Office with a Protective Overlay on an 8.4-acre platted lot located south of 21st Street and west of Cranbrook. The subject property includes a platted lot and reserve containing a detention pond. The applicant intends to develop under GO zoning with an office development, and/or assisted living type development. The applicant has volunteered a Protective Overlay (PO), which would eliminate most other uses in the GO zone, and limit the density of residential development; see the attached proposed PO.

The surrounding area is characterized by commercial uses at the 21st and Webb intersection, 800 feet west of the site. Single-family residential development exists to the north, south, and east of the site; an "NO" Neighborhood Office development is east of the site (rezoned in 2001), and a "B" Multi-family zoned apartment development sits west of the site.

CASE HISTORY: The subject property is platted as Lot 1, Block 1, and Reserve N of the Remington Place Addition to Wichita, recorded in 2001.

ADJACENT ZONING AND LAND USE:

NORTH: "SF-5" Single-family residential
SOUTH: "SF-5" Single-family residential
EAST: "NO", "SF-5" Office development, Single-family residential
WEST: "B", "LC" Apartments, vacant commercial land, shopping center

PUBLIC SERVICES: The subject property has frontage along 21st Street North, a four-lane arterial street with a 55-foot half-street right-of-way (ROW) and a center turn lane. The site is platted with access control except for one opening from 21st. Current traffic volumes on this portion of 21st are approximately 6,069 vehicles per day. The 2030 Transportation Plan recommends that this portion of 21st be a five lane arterial, as it currently exists. Cranbrook is a two-lane collector street at this location with a 64-foot ROW tapering to 90 feet at the 21st intersection.

The site has municipal water and sewer. The storm water drainage plan for this subdivision shows water from the north, south and west entering the detention pond on the site, and then draining to a pond on the apartment property west of the site. The apartment property owner (west of the application area) informed staff that his detention pond is used to irrigate the landscaping on his property. The application area has a 40-foot pipeline easement running diagonally through the property.

CONFORMANCE TO PLANS/POLICIES: The Wichita Functional Land Use Guide of the Comprehensive Plan identifies the northeast portion of the subject property as appropriate for "Major Institutional" use, consistent with the church ownership of the site. The Land Use Guide identifies the application area platted reserve as appropriate for parks and open space. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be located adjacent to arterial streets; the guidelines also indicate that low-density office uses can serve as a transitional land use between residential uses and higher intensity uses. The request is in conformance with the locational guidelines.

The Unified Zoning Code (UZC) would require screening between single-family residential development and proposed development on this site, and would require setbacks from all property lines. The Landscape Ordinance would require a landscape plan for the proposed development.

RECOMMENDATION: The office development immediately east of the site was rezoned to NO, which is more restrictive than GO zoning. The applicant has volunteered a PO, which would make this property similar to NO zoning, with the exception of assisted living and the possibility to obtain a bank or financial institution Conditional Use. The drainage reserve and pipeline easement make the southwest half of the site unbuildable, buffering the abutting single and multi-family developments.

Drainage is a concern for this platted site. Because the proposed development could be more impervious than development under SF-5 zoning, planning and storm water staff feels that a drainage plan should be reviewed. Staff has been contacted by one nearby property owner opposed to the rezoning.

Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following Protective Overlay:

1. The following uses shall not be permitted:
Manufactured Home, group residence (limited and general), cemetery, church or place of worship, college or university, correctional placement residence (limited and general), day care (limited and general), golf course, group home (limited, general, and commercial), hospital, library, parks and recreation, recycling collection station (private), school (elementary, middle, and high), utility (minor), bed and breakfast inn, broadcast/recording studio, funeral home, hotel or motel, marine facility (recreational), parking area (commercial), wireless communication facility, asphalt or concrete plant (limited), and agriculture.
2. All conditional uses permitted in GO zoning shall not be permitted with the exception of bank or financial institution.
3. Residential uses shall be restricted to a maximum density of 25 dwelling units/acre.
4. Before obtaining a building permit, a drainage study must be approved the City Storm Water Engineer.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized by retail uses at the 21st and Webb intersection, single-family residential zoning and uses north, south, and east of the site, a neighborhood office use immediately east of the site, and an apartment complex west of the site. The request is generally compatible with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single-family Residential, which accommodates churches and places of worship, schools, parks, and single-family residential development. The property could be developed as zoned; it may not be a desirable location for single-family residential development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Permitted land uses under the requested "GO" General Office zoning will be more intense than those permitted under the current residential zoning. However, the standards of the Unified Zoning Code and the Landscape Ordinance should limit noise, lighting, and other

activity from adversely impacting the nearby multi-family and single-family residential areas. The configuration of the site, with a drainage reserve and pipeline easement on the southwest portion of the site should ensure adequate buffering for nearby residents.

4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Major Institutional" development. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites should be located adjacent to arterial streets and indicate that low-density office uses can serve as a transitional land use between residential and higher intensity uses.
5. Impact of the proposed development on community facilities: Provided that drainage plans are reviewed and found to be adequate, no detrimental impacts on community facilities are anticipated.

JESS MCNEELY At your stations today should be two letters, one from an opposed neighbor, and that neighbor is here to speak to you today, and one letter from the applicant to the local homeowners, and was forwarded to us by the opposed neighbor. Likewise there is a listing of 18 protest petitions that you should have in front of you. I have been informed by an opposed neighbor who complied the list, that they are now up to 39 protest petitions as of today on this request, and we anticipate that more protest petitions will be received.

There are some concerns about drainage on this site. Obviously non-residential development can have a greater percentage of impervious materials on this site or impervious surface than what would typically be developed under "SF-5." The apartment complex west of the site raised some concerns with staff in that they have an irrigation system, which was some type of prototype irrigation system in which their ponds supply the water for the irrigation system. The detention pond on this site drains into their pond system, and the apartment complex owner was concerned that an increase of drainage or any potential contaminants that went into his storm water detention pond could potentially have a negative effect on his landscaping. Because the zone change request would allow for potential increased density and more impervious surface on the site, staff has recommended that a storm water plan for the site be reviewed by the City Storm Water staff and approved as a part of the proposed Protective Overlay. I received an e-mail this morning from MKEC informing me that their existing drainage plan for the site was done to commercial standards, and I would still point out that it wouldn't hurt for storm water to review that plan and if the existing storm water plan is sufficient then we will all feel better knowing that.

HENTZEN Is that a natural gas pipeline?

MCNEELY Yes, it is.

HENTZEN What is the width of the easement?

MCNEELY The west half the easement is 40 feet, and that is all we are prepared to discuss. I know the agent for the applicant could probably answer your questions as to how close they can build to that easement.

DUNLAP Explain to me the difference between group residence "limited and general" and group home "limited and general."

GOLTRY Group home is the use that we are required to leave in by State Statute requirements. Group residence is an option.

MCNEELY A group residence would be like a fraternity house, a group home by definition houses people with a disability.

BISHOP I have a question about Condition #3. I know that one of the proposed uses is an assisted living center, does that refer to an assisted living center or does that refer to a different type of residential use, say apartments?

MCNEELY It would refer to any residential development, whether that was the assisted living or a multi-family development.

BISHOP So assisted living center is regarded as a residential use?

MCNEELY Assisted living is not permitted by right in our multi-family residential zoning, it would be permitted by right in "GO" General Office zoning. I believe the intent of this, limiting dwellings to 25 units/acre would allow either assisted living or any other residential dwelling on this site.

MILLER Under the code assisted living is listed as a residential use.

JASON GISH, MKEC I am here to represent the applicant. The reserve where drainage detention is about 2.7 acres, Lot 1 is part of the Remington Place plat is 5.7 acres. If you take out the pipeline easement and you look at the usable amount of lot, and this isn't building usable because there is a setback requirement from the center of the pipeline that extends beyond the end of the easement. We don't know exactly what that is. We have requested that information from the pipeline company. But, typically on residential it tends to be 50 feet, but that limits our actual usable lot size to 3.8 acres, which equates to about 46 percent of the size. The proximity of where that usable space is being in the far north/east diagonal section of that parcel that we are requesting zoning for. There is quite a bit of distance between the residential area as currently built, and where you could actually construct anything. We have excluded a number of uses with the Protective Overlay that would normally be permitted uses in the "SF-5" zoning. The intention is to do office, or the assisted living, senior housing project. Regarding the drainage, PEC did the original platting of this property and that Lot 1 was designated as a commercial run off equivalent. Regarding any of the contamination of the storm water from the apartments to the west, I do know that the same developer has the commercial on the west side of the lakes that he pulls irrigation from, so I don't think we would be doing anything different then what it currently does.

TIM BUCHANAN, Legend Senior Living, 7309 E. 21st Street North, Suite 110, Wichita, KS 67206 I am a co-applicant on this project. Also Brent Thompson is here today, and he is with the church that currently owns the site. One thing on the pipeline is that there is

a KDOT regulation that a structure has to be 50 feet away from the pipeline unless there is 4 feet of cover over the pipeline. The pipeline owner has told us that there is 26 inches of cover on this pipeline, so any structure, at least on this parcel any structure, has to be 50 feet away from the pipeline. The usable acreage on this land is 3.8 acres. It is a triangular shape piece of land that is less than 4 acres that adjoins 21st Street. It is a very difficult to layout residential streets and yards. We have proposed and sent along a packet to many of the homeowners suggestions for neighborhood office type structures that are immediately across the street that are in a neighborhood office zoning that you have seen there as well as what a proposed rendering of what a proposed assisted living or senior housing may look like. I have built the Sterling Houses all over, and maybe you are familiar with the one in Tallgrass, but that is one proposed use.

The difficulty with the senior housing building is that it will exceed the 35 feet height, and I think height will be a big conversation today from the neighbors. The roof pitches and making it look like a big large home exceeds 35 feet in height and I think there are some homes in the neighborhood that viewed from the back because of the view out basements exceed 35 feet in height. It is difficult to do that with a two-story home and a view out basement and not be that tall.

The office buildings that we have proposed are the footprints that we have put on all of our suggested plans are a general footprint 50 X 100 very similar to what is in the neighborhood office complex immediately next door. We have no intention of building two story office buildings on this site.

JIM WALKER, 2026 Red Oaks, Wichita, KS 67206 I have a handout today of a list of protest petitions that have been submitted so far this morning, and a map of the lots that are protesting this application. My property is adjacent to this proposed development. If this application is granted it will permit two story office buildings, it would permit 10,000 square foot, footprints, and there is nothing that is in the application that would be any restriction against he or some future owner of doing such a thing if this application was granted without further height restriction.

The other thing that I think would be note worthy is to compare the current application with the "NO" Neighborhood Office known as Remington Office immediately to the east. That office was zoned changed 2-3 years ago, and Ron Peake control all the property between Bronco Street and 21st Street and east of Cranbrook. He sold that property at the time of the rezoning and instead of going from single-family to general office they did it as neighborhood office and they limited the depth off of 21st Street to the south to 300 feet. They cut the access off of Cranbrook near the southern most portion of that particular lot. To me it seems more reasonable and more consistent with the surrounding and adjacent neighborhoods, that either you limit the southerly incursion of this office space to the south to a similar depth of 300 feet that would still allow some neighborhood office to be put in there and that you limit it to neighborhood office and if in come to pass that there needs to be a Conditional Use or a variance or something like that because of the slope of it or some feature there are provisions to take care of it. But to simply go to general office with a 60 foot height allowance without further qualification or clarifications seems to me to be not consistent with some transition. To allow the current applicant to penetrate 750 feet down Cranbrook also seem inconsistent. I appreciate the fact that this is an unusual lot but to say that it is not appropriate for single-family residential development, I don't agree with, because that pipeline continues to the southeast and that entire area has been developed in single-family residence right around that pipeline. We have two solution, one is to leave it the way that it is, and just have this owner understand that the conditions that were existence when he bought the property will remain or to allow some neighborhood office but not to the nature or the extent that is now being applied for. Either one of those proposals seems to me more benign with respect to the relative neighborhood owners then the one currently on the table. Because of the pipeline all of the illustrations that I have seen from the applicant that are under consideration have a strip of office basically running at a 45 degree angle across that lot so that in the context you will have office building sitting at a slant and it will not be appealing.

BISHOP Is your objection primarily to the 60-foot or the type of businesses that may go in there?

WALKER My objection is to the fact that they are skipping over neighborhood office, which has both a density component and a height component, and it allows a use that would not otherwise be allowed in neighborhood office namely assisted living.

BISHOP Your objection is to the assisted living?

WALKER I would say that if it was zoned neighborhood office it would be restricted to neighborhood office and not assisted living, and it could be kept up closer to 21st Street and whatever the remainder of that lot is could be patio homes or the like which would be more consistent with neighborhood office.

BOB PINKSTAFF, 10208 E. SHADYBROOK, WICHITA KS 67026 I was born at 606 E. Central and that was commercial area at that time I am a native of this town. I use to hunt were I am living now. I am totally against anything but residential in this piece of ground. When my wife and I built this house Mr. Peak had already had the development in and he has done a good job. This piece of ground to the west was blank and there is nothing there. I am firmly against any kind of commercial development of any kind on that lot. I am against any more office buildings and the one that is there now still has 4-5 vacancies. Look at this ground look at Rock Road we are there with Target, and commercial stuff and we are loading 21st Street down and we have a residential area out there as well. I don't want to live with a nursing home in my backyard. There is going to be heavy traffic, we already have a problem getting across 21st Street. The noise, trash and traffic will be bad. I would like the MAPC since the city is bent on trying to revive the downtown area of this town why not use the vacant buildings to accommodate this proposal?

WARNER I would say he has the same rights you have and if he doesn't select to go downtown he can build on his own property.

JAMES DONNELL, 2023 N. Frederic, Wichita, KS 67206 I would like to address the question of the protest petition that we have filed and the other 31 petitions against this change in zoning. The major objection that I have is that the area was zoned residential, it is strongly residential, the lots are filling up and they are building homes everyday. The construction in the area is great. There is trash in the ponds that are unkempt in the area. This proposal will change this from residential use and it is unnecessary. The Waterfalls used to be Beech Lake II it is nice and we think we should keep our area as residential in its entirety.

JACKIE SMITH 2030 N. RED OAKS As you can see any zoning change would impact my home in a possibility unfavorable fashion. I would have to agree with Mr. Walker who is my neighbor to the east, and I would like to see some consistency in zoning such that there will be a consistence ambiance in the neighborhood.

BUCHANAN I have a few handouts since the CD won't work. As you can see from the image on the screen, you can see the size of the lots and how much would fit on 3.5 acres, next to a pipeline and adjacent to 21st Street. The other issue is coming down 300 feet. There is a pond between the current neighborhood office and the houses. There is no screen between the neighborhood buildings and the houses across the pond. In our plan the nearest structure that would be adjacent to the residential lots to the south, and particularly Lot 9, the nearest structure would be well over 100 feet to the north of the house given the pipeline easement and given the setback required, the triangular nature of that corner, and all the side yard setbacks. The primary structure if you look at the center of the lot, which is where the primary building would be, is about 250 feet away. There has been much spoken about this site being single-family, a church currently owns it, a church could be built on this site, with about a 400 seat sanctuary and a multi-purpose building, with 2-400 parking spaces, outside lights, which is a much more intrusive use then we are proposing. We have limited a lot of uses that could be allowed with the Protective Overlay that we are proposing to restrict uses.

DUNLAP The drawing that you gave us appears to be one-story units is that what you are planning? Or second story units?

BUCHANAN There is actually a second story behind that, that is the front of it. It is one story. The actual ridgeline of that drawing is about the level of that second floor roof. It will not be 60-feet in height and I think that is one of the issues. We could have easily maybe gone with a "NO" Neighborhood Office request with maybe a little bit of a higher height and our zoning request is confined to what is allowed in a "NO" district with a little bit extra height.

DUNLAP It appears you are aiming for an assisted living use. When you do that are you thinking about the same kind of amenities and features that you had at Sterling house?

BUCHANAN It is nicer than the Sterling House.

SHERMAN Have you had a chance to meet with the residences surrounding this proposal that are petitioning against this rezoning?

BUCHANAN No, we have not met with them as a group. We are here today prior to the DAB meeting, and I have met with Mr. Walker and other individuals that live more closely to the land, and have gotten a variety of responses. One was concerned about the dumpster locations, height of lighting, and mostly it was over the height of the building.

SHERMAN So you haven't gotten to address their concerns or answer their questions directly?

BUCHANAN Only on an individual basis. I have spoken to about six homeowners individually.

BISHOP I have seen the drawing that shows three buildings, and it says each building is one story, and I know I saw another one that indicated it was two stories.

BUCHANAN You might have but it didn't come from me.

BISHOP The reason that I am asking is that I am assuming because of condition three in the recommendation, you would be restricted to basically roughly 75 units.

BUCHANAN That is 25 units to the acre, and the site is about 5 acres.

BISHOP So you are talking 75-100 units?

BUCHANAN No, about 75-80 units. We are looking strongly at the offices, and I don't want to leave the impression that the only thing to be on here will be the assisted living because we have not completed a feasibility study.

MCKAY This drawing that was handed out with this petition stuff.

BUCHANAN I will tell you where the drawing came from, my very first meeting was with Mr. Walker out on the site I had a several drawings with me, MKEC did a variety of concepts one of which showed two story buildings, and I made it perfectly and irrevocably clear to Mr. Walker that I had no intentions of building two story buildings. He asked if he could have my information and I said you are welcome as long as you don't represent that I am building two story buildings.

MCKAY Mr. Walker did not seem opposed to "NO" Neighborhood Office.

BUCHANAN I really can't speak for him.

MCKAY That is what came across to me he said "NO" Neighborhood Office was better then "GO" General Office and a lot of it had to do with the height requirements. In "NO" in relation to "GO", the basic difference between the uses are that you are wanting to do assistant living and office is primarily assisted living has to get a Conditional Use in that area where regular "GO" General Office you don't have to get a Conditional Use. I am wondering if you might consider "NO" Neighborhood Office rather then "GO" General Office with any fashion whatsoever, the neighbors considering that also. You have an awful lot of petitions against you.

BUCHANAN For both for either proposed use, office or assistant living. I am not opposed to that, we could have made the application with "NO" Neighborhood Office with a variance in the height and Conditional Use for assisted living, I am not opposed to that, the result is the same.

MCKAY That is what the feedback I received from the first speaker today, he mentioned Neighborhood Office I don't know how many different times, that might be an alternative and not have all these petitions, because this is something in our Rules for Approval opposition by the neighborhood is pretty much relied on. I don't know if it might be advantageous for you to postpone our decision today for two week or a month to meet with those people and try and negotiate something out.

BUCHANAN I think that is a very reasonable recommendation. My seller is nodding this is fine.

MILLER Part of the reason why staff recommended for them to go "GO" General Office was when we had our development meeting, they indicated they needed 40 feet in height but what is not clear is whether they are thinking that is the peak or whether that is measured half way up the gable, which is the way OCI would actually measure. That was the primary reason why we backed into it with the "GO" and restricting it down to "NO" uses except for the assisted living because the height was one of the questions that seemed to be unable to overcome by using the "NO", but if someone knows the dimensions on the drawing in terms of the peak versus half way down we maybe able to answer that today.

MCKAY That is why I am asking about a deferral I think some of that stuff can be worked out. There a whole bunch of people that have signed the protest petitions. After listening Mr. Walker he mentioned neighborhood office a number of times.

MOTION: To defer the request 4 weeks so the applicant, owners, and agent can work with neighborhood.

HILLMAN moved, **JOHNSON** seconded.

SHERMAN After the DAB meeting?

MCKAY You are hung up on the DAB meeting.

SHERMAN You know what, I am on them not being able to work it out.

MOTION CARRIED 12-0.

7. **Case No.: ZON2005-55** – Diem Vu and Quang Ta Request Zone change from "SF-5" Single-family Residential to "NR" Neighborhood Retail on property described as;

Lot One (1) and Lot Two (2) Ivy Christine 1st Addition, Wichita, Sedgwick County, Kansas. Generally located Midway between Ridge Road – Hoover Street, midway between Maple Lane, Arapaho Drive, on the north side of Taft Street.

BACKGROUND: The applicant requests a zone change from "SF-5" Single-family Residential to "NR" Neighborhood Retail on the platted undeveloped site. The applicant lives in the single-family residence that abuts the east side of the site. The applicant proposes to build a beauty shop, which the Unified Zoning Code (UZO) classifies as a personal care service. Personal care services are first permitted by right in the "NR" zoning district. The applicant was advised that a beauty shop was permitted as a home occupation, with conditions (Art. IV, Sec. IV-E), in the "SF-5" zoning district but felt the conditions were too restrictive. The site is a block and a half west of Julia Street, between Maple Lane and Arapaho Drive, on the north side of Taft Avenue.

Single-family development and "SF-5" zoning abut and is adjacent to the east and west sides of the site. An undeveloped "SF-5" zoned tract abuts the site's north side, with more "SF-5" zoned single-family residences adjacent to the site's north side. In general, it can be stated that the site is part of a "SF-5" zoned single-family residential neighborhood that is bound by Maple Avenue on its north side, Ridge Road on its west side, Hoover Street and the Big Ditch on its east side, and Taft Avenue on its south side. The exceptions are an undeveloped "LC" Limited Commercial site with a Protective Overlay, located a block and a half east of the site (on the northwest corner of Julia Street and Taft Avenue) and a partially developed "LC" zoned property on the southeast corner of Maple Avenue and Ridge Road. The greater part (between Julia Street and Ridge Road) of the north-south residential streets in the neighborhood do not intersect (and thus have access) Taft Avenue, but instead end as hammerheads with barriers and yard between them and Taft's curbing/right-of-way.

Development paralleling this single-family residential neighborhood, located south of the site and across Taft Avenue includes big box retail; large retail strips and some freestanding drive through restaurants. This commercial area's zoning is primarily "GC" General Commercial, some "LC" zoning and all of it overlayed with Community Unit Plans (CUP). The retail area mostly faces Kellogg Avenue with its back turned to the site's single-family neighborhood. Masonry walls and landscaping provide a buffer between the back of most of the retail and the adjacent site's single-family neighborhood. Access into this retail area off of Taft is through Hoover Street, Julia Street, Dugan Road and an access easement. This access to the retail off of mostly public street right-of-way for the most part allows the commercial area's masonry wall and landscape buffer to be unbroken.

CASE HISTORY: The subject property is platted as one of two lots in the Ivy Christine 1st Addition. The Ivey Christine 1st Addition was recorded with the Register of Deeds October 21, 1996.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-5"	Single-family residences, undeveloped tract
SOUTH:	"GC" "LC"	Big box retail, large retail strips, free standing fast food
WEST:	"SF-5"	Single-family residences
EAST:	"SF-5"	Single-family residence

PUBLIC SERVICES: The site and the applicant's eastern abutting lot/residence (the two lots of the Ivey Christine 1st Addition) are the only properties in the single-family residential neighborhood north of Taft Avenue that have access onto them exclusively from

Taft. The two lots do not abut or have access to any of the north-south residential streets that end as hammerheads rather than intersecting Taft. Taft Avenue is a four-lane street (not an arterial) that acts as a collector for the commercial development on its south side. There are no traffic counts on this portion of Taft Avenue. The 2030 Transportation Plan shows no change to Taft's current status. Water, sewer and all other utilities are available.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide of the Comprehensive Plan classified the subject tract as "urban residential". The Guide classifies personal care services as "local commercial". The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request does not conform to the Land Use Guide or the Commercial Locational Guidelines of the Comprehensive Plan.

RECOMMENDATION: The request appears to be spot zoning, with a site in the middle of an extended 'SF-5' zoned single-family residential neighborhood going for a less restrictive "NR" zoning on a street that is not an arterial. Therefore, based upon information available prior to the public hearings, Staff recommends DENAIL of the requested "NR" zoning.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The neighborhood's zoning and development is split by Taft Avenue. Properties north of Taft, where the site is located, are overwhelmingly zoned "SF-5" and are developed as single-family residences, with a few undeveloped tracts in the neighborhood. South of Taft development is big box retail, large commercial strips and a few free standing fast food restaurants all zoned "GC" or "LC" with CUP overlays. For the most part the commercial development south of Taft has been developed with its back to the single-family residential north of Taft, with masonry walls and landscaping further buffering the residential. Taft acts as a backdoor collector for the commercial development south of Taft, with no access off of Taft into the residential neighborhood north of Taft, via the neighborhood's north-south residential streets, which dead end as hammerheads.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed as a single-family residence, similar to the applicant's abutting residence and all of the abutting and adjacent properties north, east and west of the site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed "NR" zoning would allow non residential development to be introduced into the single-family neighborhood, at a location in the middle of the block. Allowing the "NR" zoning could possibly lead to the beginning of the stripping out of the north side of Taft, which would compromise the single-family residential neighborhood.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "urban residential" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The requested zone change on the site is not in conformance to the Land Use Guide or Commercial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: Community facilities should be minimally impacted, if this is the only commercial zoning allowed along Taft Avenue.

MILLER My understanding the reason the applicant wants to do this is they want to have a facility that doesn't have to comply with the home occupation rules in the single-family district which would restrict it to only residents of the home; they can't do sales to customers, those kinds of things. They would have to live in the structure, so it would have to be attached to the house, and I understand that they do not intend to attach it to the house. Staff is recommending denial of the request primarily because it is surrounded by single-family homes, and single-family zoning. The "NR" Neighborhood Retail district would allow a pole sign up to 32 square feet and also a building sign up to 32 square feet that could be put in here in this residential setting. Taft Street has kind of been used as the border street between the commercial activities to the south and then trying to preserve this neighborhood to north.

DUNLAP It doesn't appear there but I am pretty sure all those streets to the north are closed?

MILLER Yes, these are blocked off (referring to the map).

DUNLAP If I remember right we had a case before of rezoning of this property and there is nothing on your arrow there?

MILLER Based on the aerial that I have it is vacant. It is an undeveloped tract.

MITCHELL Dale, to the best of your knowledge is there access from Taft to the applicant's lot?

MILLER No, I don't believe there is. Looking here with this being undeveloped, I would assume that they would have rights to an access point if they pulled a building permit as there are other driveways off there.

MCKAY Dale, their house that they live in now, the way that I look at it, they do have access to Taft?

MILLER Yes, they do have access to Taft.

QUANG TA, 6210 W. Taft, This is my first experience at this. The back lot back there is vacant. My house on the right side and the lot I own the whole lot. When I buy this property it can be a single-family house on it. Along Taft from Julia all the way up to Ridge

Road there is no access from the other people on the other street to come out. We are proposing to have a little beauty shop for my wife and she will work there. I don't intend to have employees or have any problems with the neighborhood.

SHERMAN There is nothing on that property but you are going to attach to your house?

MILLER No, the reason they are not pursuing this as a home occupation is they would have to live in the house and my understanding is they don't intend to.

PETER GRANT 426 S. Maple Lane, Wichita, KS 67209 I agree with the staff recommendations of denial. To allow a zoning change in a residential area from single-family to neighborhood retail could open a can of worms, and other businesses could be built on that property north of his property and behind where I live. Right now on the south side of Taft all sorts of retail, Wal-Mart, Sam's, car dealerships, strip mall, fast food, why do we need more businesses especially north of Taft where none exist now? When I moved there in 1988, it was a lot different then it is now. Some days Taft can be very busy just from people coming from the businesses to the south. Allowing a business to the north of Taft with limited access just to get on Taft would making it hard for people coming out of there. The speed limit on Taft is 40 mph and they usually much faster. Just west of that property on Dugan there have been a lot of accidents there on Dugan and Taft. Keep the retail south of Taft and keep the residential neighborhood residential.

DONNA KNUTH, 437 S. ARAPAHO, WICHITA, KS 67209 I do agree with the denial of the application. I do appreciate the reason for their idea of having their business close to home where she can be with the children, I do agree with that. But, several times over the last 19 years that we have lived in our home we have been here and had to speak on the preserving the integrity of this neighborhood because we are surrounded by commercial. I do not oppose them having a beauty shop, I just don't want the area rezoned because that would invite others to rezone.

DIEM VU, I own a beauty shop for 8 years now. I do it for myself and I do not have employees. I know I can do a home occupation in my house, if I can enlarge my house to do it in my house. I have empty land next to my house that is why I apply for a zone change so I can build a little shop there. Little questions I have, if I get the denial from City Hall, I can't build a beauty shop right there? Can I build a house there? Can I do a home occupation in that new house?

BISHOP If you live there.

MILLER If you live there you can do it as a home occupation.

VU When I spoke with Mr. Longnecker, he did tell me that I will have a hard time with the neighbors because the old owner tried to rezone before and he got a denial before, but if I don't try how will I know? I have an empty land and want to build my business next to my home. If I do not get approval here I will get a home occupation.

SHERMAN Where do you have your business now?

VU I do nails, and facials, and wax, and everything. I rent right now, about \$1,000 for a booth, across from Towne West.

MOTION: To deny the application.

DOWNING moved, **MCKAY** seconded the motion, and it carried (11-0).

MCKAY I think someone from staff needs to sit down and explain to them what they can and I can't do with that property. I think she left here with the impression that she can add on to it, and someone needs to explain what a home occupation is.

MILLER We have done that.

8. **Case No.: ZON2005-56** – Price Transportation, Inc., c/o Ed Toon (owner); Baughman Company, PA c/o Terry Smythe (agent) Request Zone change from "SF-5" Single-family Residential to "LI" Limited Industrial

The South 540 feet of the West 750 feet of the Southwest Quarter of the Southeast Quarter except CC A-76777 and Except the South 65 feet for road and except the West 100 feet for street, Section 8, Township 28, Range, 1 East.
Generally located Northeast of MacArthur and Gold.

BACKGROUND: The applicant requests a zone change from "SF-5" Single-Family Residential to "LI" Limited Industrial on a 6.4-acre unplatted tract located north of MacArthur Road and on the east side of Gold Street. The subject property is currently undeveloped. The applicant proposes to develop the property with an expansion of their adjacent trucking company, located to the north of the subject property.

The surrounding area is characterized by a mix of residential, commercial and industrial uses. The applicant's existing trucking business is immediately north of the subject property and is zoned "LI" Limited Industrial. Across Gold, several single-family residences zoned "SF-5" front on MacArthur. Immediately north of those residences is a large manufactured home park zoned "MH" Manufactured Housing. Further north on Gold, immediately north of the existing trucking business, is another single-family residence zoned "SF-5". The properties to the south across MacArthur are zoned "GC" General Commercial and developed with warehouse, self-service, a car wash, and a few single-family residences. Immediately east of the subject property is I-235. A large cement operation is located east of I-235.

CASE HISTORY: The subject property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH: "LI"	Freight terminal
SOUTH: "GC"	Car wash; warehouse, self-service; single-family
EAST: ROW; "LI"	Freeway right-of-way; cement plant
WEST: "SF-5" & "MH"	Single-family and manufactured home park

PUBLIC SERVICES: The subject property has frontage along MacArthur, a four-lane arterial with 105 feet of right-of-way and 2003 average daily traffic count of approximately 10,000. There is also frontage along Gold Street, a collector with 209 feet of right-of-way. The wide right-of-way originated from historic plans for the Midland Valley Railroad and extension of McLean Blvd. The site currently has no platted access points to either MacArthur or Gold. Access to the site shall be 400 feet west of the I-235 ramp; this will be addressed at platting. Public water and sewer service are currently available to the subject property. Other normal public services are available.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Employment/Industrial" development. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses be located in close proximity to support services such as major arterials, truck routes, highways, utilities trunk lines, rail spurs, and airports. Furthermore, development of the subject property would allow direct access to MacArthur for the applicant's existing freight terminal, rather than putting additional industrial traffic onto Gold. Therefore, this application request is consistent with adopted plans/policies.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by a mix of residential, commercial and industrial uses. The properties across Gold Street are developed with single-family and manufactured home residential uses, but this area has been identified as appropriate for industrial uses in the City-County land use guide, and the properties along MacArthur have slowly converted from residential to commercial and industrial uses. The property immediately north of the subject property is zoned "LI" Limited Industrial, as are large tracts of land across I-235. The proposed "LI" Limited Industrial zoning is compatible with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "SF-5" Single-Family Residential, and is unplatted and undeveloped. Given the guidance provided by the land use guide that this area should be developed with industrial uses, further residential development of the subject property would not be suitable and would be contrary to the community's goal of converting the area from residential to industrial use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects on remaining residential properties in the area should be minimized by the screening, lighting, and compatibility standards of the Unified Zoning Code and by the requirements of the Landscape Ordinance.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies this area as appropriate for "Employment/Industrial" development. The Industrial Locational Guidelines of the Comprehensive Plan recommend that industrial uses be located in close proximity to support services such as major arterials, truck routes, highways, utilities trunk lines, rail spurs, and airports. Therefore, the proposed zoning is consistent with the Comprehensive Plan.
5. Impact of the proposed development on community facilities: The proposed development would create additional traffic impact on MacArthur Road. This concern will be addressed at platting. Otherwise, there should be no detrimental impact upon community facilities.

MOTION: To approve subject to staff recommendations.

JOHNSON moved, **MCKAY** seconded the motion, and it carried (12-0).

The Metropolitan Area Planning Department informally adjourned at 3:42 P.M.

State of Kansas)
Sedgwick County) ^{ss}

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 2006.

John L. Schlegel, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)